SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims ("Settlement Agreement"), is a full and complete settlement of the lawsuit entitled Paul Swartwood v. Mark Fodness and Bemidji State University, Case No. 04-CV-17-2540, filed in Beltrami County District Court ("the Lawsuit"). The Settlement Agreement is entered into between the following parties: (1) Paul Swartwood ("Plaintiff") and Mark Fodness and Bemidji State University (jointly, "Defendants"). The Plaintiff and Defendants shall be referred to collectively as "the Parties."

The term "Released Parties" in this Settlement Agreement means the Defendants, the State of Minnesota, and all of their respective agencies and entities, and all of their respective present and former officers, agents, representatives, employees, attorneys, insurers, predecessors and successors in interest, and assigns, in their official and individual capacities.

RECITALS

Plaintiff filed the Lawsuit on August 28, 2017. The Lawsuit alleges that Defendant Mark Fodness, as the Coach for the Bemidji State University tennis team, made false and defamatory statements about Plaintiff on or around September 2015, to the women's tennis team and others. Plaintiff alleges a defamation claim against Mark Fodness and a vicarious-liability claim against Bemidji State University.

The Parties recognize that achieving a final result through the litigation process would require additional risk, discovery, time, and expense. Plaintiff has reviewed this Settlement Agreement and agrees to be bound by its terms.

The Parties to this Settlement Agreement, intending to be legally bound and in consideration of the mutual covenants and other good and valuable consideration, the sufficiency of which is hereby acknowledged and set forth below, hereby agree as follows:

AGREEMENT

1. **Monetary Payment**

Defendants agree to pay Plaintiff the sum of Twenty-Five Thousand Dollars and Zero Cents ($25,000.00). This payment shall be made to "Collins, Buckley, Sauntry and Haugh, in trust for Paul Swartwood" no later than thirty (30) calendar days after the execution of this Settlement Agreement and Defendants' receipt of an IRS Form W-9 for Collins, Buckley, Sauntry & Haugh, PLLP. A 1099 tax form will be issued with regard to this payment. Plaintiff represents and agrees that no representations as to taxability, tax treatment, or tax consequences have been made to them by Released Parties. Plaintiff agrees that he will be responsible for and indemnify the State for payment of any and all state and federal tax liabilities and/or penalties, if any, regarding the payments described above.

2. ***Letter***

Mark Fodness agrees that he shall provide a signed and dated letter that reads as follows:

TO WHOM IT MAY CONCERN:

I have never asserted or implied to anyone that Paul Swartwood is or ever was a sexual predator or has otherwise acted sexually-inappropriately toward young women. I did recommend to members of my tennis team that they not take private lessons from Paul Swartwood, but did so only for tennis-related reasons. To the extent I said anything that caused others to believe that the reason I made this recommendation was that I had such concerns, that was not my intent and I retract those statements.

This letter will be mailed by United States Mail to Pat T. Tierney at Collins, Buckley, Sauntry and Haugh within five (5) business days after the execution of this Settlement Agreement.

3. **Release of Claims and Dismissal With Prejudice**

Plaintiff agrees to release and forever discharge Released Parties from any and all liability related to the Lawsuit. Plaintiff further agrees to dismiss the Lawsuit with prejudice after the execution of this Settlement Agreement. A Joint Stipulation for Dismissal of the Lawsuit filed in Beltrami County District Court is attached to this Settlement Agreement as Exhibit A. The Parties agree that Exhibit A will be jointly executed and filed within five (5) business days after the execution of this Settlement Agreement.

In consideration for items described above in Paragraphs 1 and 2, and in exchange for the promises herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, Plaintiff, for himself and his heirs, administrators, representatives, agents, attorneys, successors and assigns, completely releases and forever discharges Released Parties and all of their respective present and former officers, agents, representatives, employees, attorneys, insurers, predecessors and successors in interest, and assigns, in their official and individual capacities, from each and every legal claim or demand of any kind that Plaintiff ever had or might now have, whether or not any such claim is known to him. This release specifically includes, without limitation, all claims arising out of or relating to Plaintiff's Lawsuit, and all claims Plaintiff raised or could have raised in the Lawsuit.

Plaintiff fully understands that this is a full, final and complete release of all claims against the Released Parties, including, but not limited to, all claims under local, state or federal laws, rules, regulations, ordinances or executive orders relating to the non-payment, or untimely payment, of earned fees. Plaintiff also understands that he is releasing all claims, including but not limited to, all claims for penalties, all claims for attorneys' fees, costs and disbursements incurred by Plaintiff or any of his attorneys, all claims for mental anguish and suffering, all claims for damage to reputation, all claims for economic loss, all claims for damages, all claims for compensatory damages, all claims for punitive damages, all claims for fraud or misrepresentation, all claims that Plaintiff was defamed, or that his rights under the Minnesota Government Data Practices

Act (Minn. Stat. § 13.01, *et. seq.*) were violated, or that his civil or constitutional rights were violated, or that he has been treated unfairly, or that there has been a breach of an express or implied covenant of good faith and fair dealing, all claims in equity, all claims of tortious conduct, and all claims arising under the statutory or common law of any state.

This Settlement Agreement does not waive or release any rights or claims of any kind that Plaintiff may have which arise out of acts occurring after the Parties sign this Settlement Agreement.

4. Right To Consult With Attorney

Plaintiff acknowledges and agrees that he has been advised by Defendants that he has the right to consult with an attorney prior to entering into this Settlement Agreement.

5. Release of Information

The Parties understand that the release of information by Released Parties, or any other agency or department of the State of Minnesota, about this matter is governed by Minn. Stat. § 13.01, *et seq.* ("Minnesota Government Data Practices Act") and Minn. Stat. § 15.17, *et seq.* ("Official Records Act").

6. No Admission of Liability.

It is expressly understood and agreed as a condition hereof that this Settlement Agreement shall not constitute nor be construed to be an admission of any wrongdoing or liability on the part of Released Parties.

7. Severability

The Parties understand and agree that the invalidity or partial invalidity of any portion of this Settlement Agreement shall not invalidate the remainder of it, and the remainder shall remain in full force and effect.

8. Sole and Entire Agreement.

This Settlement Agreement constitutes the entire agreement of the Parties concerning the subjects contained herein, and no modification of this Settlement Agreement and/or other promises or agreements shall be binding unless in writing and signed by all the Parties hereto.

9. Plaintiff's Understanding Of Settlement Agreement

Plaintiff agrees that he has read this Settlement Agreement, knows its contents and has signed it as a free and voluntary act having had adequate opportunity to consider its terms and conditions.

10. Counterparts

This Settlement Agreement shall become effective upon its execution. The Parties may execute this Settlement Agreement in counterparts, and execution in counterparts shall have the same force and effect as if the Parties had signed the same instrument. Any signature made and transmitted by electronic means for the purpose of executing this Settlement Agreement shall be deemed an original signature for purposes of this Settlement Agreement and shall be binding upon the signing party.

11. Enforcement

This Settlement Agreement is to be interpreted and enforced in accordance with the laws of the State of Minnesota. Any action to enforce this Settlement Agreement shall be adjudicated in the state courts of Minnesota.

Dated: April 18, 2019, 2019

By: Paul Swartwood
As: Plaintiff

Dated: 4-19-, 2019

By: Mark Fodness
As: Defendant

Dated: April 18, 2019

By: Faith Hensrud
As: President of Bemidji State University

EXHIBIT A

Paul Swartwood,

Plaintiff,

vs.

Mark Fodness and Bemidji State University,

Defendants

Case No. 04-CV-17-2540

STIPULATION OF DISMISSAL WITH PREJUDICE

WHEREAS, the above-entitled action has been fully compromised and settled,

NOW THEREFORE, it is hereby stipulated and agreed, by and between Plaintiff Paul Swartwood and Defendants Mark Fodness and Bemidji State University ("Defendants") that the above-entitled matter, together with all causes of action and claims that were or that might have been alleged therein, is dismissed on the merits and with prejudice, and without any fees or costs to any party.

Dated: _____, 2019

/s Patrick Tierney
COLLINS, BUCKLEY,
SAUNTRY & HAUGH, P.L.L.P.
Atty. Reg. No. 109939

W-1100 First National Bank Building
332 Minnesota Street
St. Paul, Minnesota 55101
(651) 227-0611

Attorney for Paul Swartwood

Dated: _____, 2019

/s Kathryn Iverson Landrum
Assistant Attorney General
Atty. Reg. No. 0389424

445 Minnesota Street, Suite 1100
St. Paul, Minnesota 55101-2127
(651) 757-1189

Attorney for Mark Fodness and Bemidji State University

Dated: _____, 2018

Jeanne Andersen
Assistant Scott County Attorney
Atty. Reg. No. 0248034

200 4th Avenue W
Shakopee, MN 55379
(952) 496-8248

Attorney for Defendant Gary Shelton as Scott County Administrator

BELTRAMI COUNTY DISTRICT COURT

Paul Swartwood,

Plaintiff,

vs.

Mark Fodness and Bemidji State University,

Defendants

Case No. 04-CV-17-2540

ORDER FOR DISMISSAL WITH PREJUDICE

Based upon the Stipulation Of Dismissal With Prejudice submitted by the parties to this matter,

IT IS HEREBY ORDERED that the above-entitled action is dismissed with prejudice and without any fees or costs to any party.

Dated:_____

BY THE COURT:

_____

Judge of District Court